

**LEGISLATIVE RESEARCH COMMISSION (LRC)  
ENERGY POLICY ISSUES**

**COMMITTEE MEETING**

**February 15, 2012**

**QUESTIONS & ANSWERS**

**Jordan Treacle, Mineral Rights Project Coordinator, Rural Advancement Foundation International-USA, Chatham County.**

Senator Walters: Would it be a fair statement to say that landowners will be in a very difficult situation to negotiate a lease until we as the State of North Carolina give them some direction of where we are going in the State. It is almost like the chicken and the egg situation where landowners really don't understand because we as a state have not taken the position of where we need to go as far as fracking and natural gas.

Mr. Treacle: I wouldn't say that is correct, because landowners are signing these leases and getting approached with contracts currently, so that process has already started. The issue that we are really concerned about is that landowners don't have access to adequate information on what a fair contract looks like, whether hydraulic fracturing is legal or not in this state. They are still signing these contracts that have very few protections in them.

Senator Walters: Just to talk a little bit about surface rights and mineral rights, most landowners know ahead of time whether they have the mineral rights or not either through fee simple acquisitions of the land, they already know they don't own those mineral rights. Is that correct?

Mr. Treacle: Actually, we have found that most landowners do not know for sure whether they own their mineral rights or not. If it's clearly stated on their deed, they can know, but generally, because of bad recordkeeping, most folks have not had to think about their mineral rights in North Carolina. So a lot of folks don't know if they own their mineral rights which would require hiring an attorney to go back and try to find if those mineral rights were ever severed from the surface estate. I was just talking to a gentleman in Kentucky who had to go through this process and spend \$10 thousand on an attorney to trace his deed all the way back and make sure he did own the mineral rights to that surface estate. We believe there are approximately 6,000 acres of split estates in Lee County at this point. We don't know who those surface owners are or whether they know they have their own mineral rights or not. There have been reports in the media of folks who do own their mineral rights but not the surface estate. I think there is a lack of clarity on that issue.

Senator Walters: Historically that has been dealt with in fee simple title and it comes through deed transfers and it's noted on those transfers of those deeds if they own the mineral rights or not.

Mr. Treacle: Different states do it differently. Some states have centralized locations where leases are posted as well as maps where both landowners and companies can go into a centralized database and see who owns the mineral estate and who owns the

surface estate. We don't have that right now and the records really depend on a county by county basis in terms of quality of their records.

Senator Rucho: For us that are non-lawyers, and understand that I fully support the fact there should never be a lawyers employment creation bill, but when you buy a house, because of all the complications, whether it be buying a house or getting one of these leases, you go to an attorney to make sure your rights are protected. Now, yes, it is important to understand all of the ramifications, but at what point do you suggest that a landowner do this without the advice of an attorney who would be there to protect their rights and necessary title searches that would be there to be sure they have the right to lease something?

Mr. Treagle: That is a very good point, and we always encourage landowners to work with an attorney before considering signing a mineral rights lease. Unfortunately, landowners don't always do that. I only know of one landowner in NC who had signed a lease but worked with an attorney before signing that contract. Again, other states with shale development have recognized that protections outside of the lease need to be in place to make sure that our residents are protected as well as the residents of surface estate owners who don't own their mineral rights and don't have the access to a contract that they can hire an attorney for those protections and adjacent landowners who don't have that opportunity to negotiate a contract.

Senator Walters: You talk about folks not knowing, but it is just hard for me, when you do a title search in North Carolina, the paralegal will tell you whether there is any utility easements, they will tell you if you own the mineral rights; all that is in the opinion, so I just have to believe that folks do know whether they own the mineral rights or not.

Mr. Treagle: Again, I can just tell you, in terms of the landowners that we have met with in these counties, that most folks are not clear on that issue and they find it difficult to find an experienced attorney who understands what these contracts look like, because we haven't had this industry in this state. So, there are attorneys coming to the state; it is a slow process, but there are very few legal resources for North Carolina landowners at this point.